

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

PATRICK J. CONNORS,

Plaintiff,

v.

IQUEQUE U.S.L.L.C., et al.,

Defendants.

CASE NO. C05-334JLR

ORDER

I. INTRODUCTION

This matter comes before the court on Plaintiff's motion to compel maintenance and cure (Dkt. # 22). For the reasons stated below, the court GRANTS the motion in part and DENIES it in part.

II. BACKGROUND

Plaintiff is a maritime engineer who served aboard the F/V UNIMAK ("UNIMAK"), a ship that Defendants own, beginning in late May or early June 2004. On June 15, 2004, Mr. Connors experienced chest pain while lifting a pump onboard the UNIMAK. On June 21, 2004, while on shore, Mr. Connors again experienced chest pain. His treating physician, Dr. Lawrence Haft, later diagnosed the June 21 incident as a mild heart attack. Since then, he has undergone treatment, including two surgical procedures.

1 He continues to take numerous medications. Dr. Haft does not believe that Plaintiff will
2 ever be able to return to maritime employment.

3 Between June 21, 2004 and February 15, 2005, Defendants paid just under \$5,000
4 in maintenance, just under \$5,000 in unearned wages, and just over \$100,000 in cure
5 payments. On February 15, 2005, Defendants terminated maintenance and cure
6 payments.
7

8 Plaintiff now moves to compel additional maintenance and cure payments.

9 III. ANALYSIS

10 A shipowner's obligation to provide maintenance and cure has its roots in ancient
11 maritime law. Vaughan v. Atkinson, 369 U.S. 527, 532 n.4 (1962). When a seaman is
12 injured in service of his vessel, the shipowner has an obligation not only to bring the
13 seaman to a port for treatment, but to pay maintenance (compensation for room and board
14 equivalent to what the seaman would have received aboard the vessel) and cure
15 (payments for medical treatment necessary to restore the seaman to health). Id.; see also
16 MARTIN J. NORRIS, THE LAW OF SEAMEN §§ 26:5-26:6 (3d ed. 1985). Maintenance and
17 cure are available even where the shipowner is not at fault for the seaman's injury in the
18 service of the vessel. Berg v. Fourth Shipmor Assocs., 82 F.3d 307, 309 (9th Cir. 1996).
19 A seaman's entitlement to maintenance and cure continues until he reaches "maximum
20 cure" – a recovery as complete as the injury or illness allows. Id.
21

22 The critical question before the court is under what standard it should consider
23 Plaintiff's motion. Defendants urge the court to treat the motion as one for summary
24 judgment. Plaintiff argues that the court can order maintenance and cure pending trial on
25 a lesser showing than that required for summary judgment. As another court in this
26 district has noted in addressing a motion for maintenance and cure, "[o]ther than a motion
27 for summary judgment, [the court is] aware of no procedure of obtaining pre-trial
28

1 judgment on the merits of a claim.” Guerra v. Arctic Storm, Inc., No. C04-1010L, 2004
2 U.S. Dist. LEXIS 24388, at *2-3 (W.D. Wash. Aug. 4, 2004). In deciding a motion for
3 summary judgment the court must resolve reasonable doubts against the moving party and
4 draw all inferences in the light most favorable to the non-moving party. Addisu v. Fred
5 Meyer, Inc., 198 F.3d 1130, 1134 (9th Cir. 2000). This squares awkwardly with the
6 Supreme Court’s instructions to defer to seamen in determining maintenance and cure
7 questions. E.g., Vaughan, 369 U.S. at 532 (“When there are ambiguities or doubts, they
8 are resolved in favor of the seamen.”); Aguilar v. Standard Oil Co., 318 U.S. 724, 735,
9 (1942) (duty to pay maintenance and cure should “not be narrowly confined or whittled
10 down by restrictive and artificial distinctions defeating its broad and beneficial
11 purposes”).

12
13 Although the Supreme Court has cautioned against “exceptions or conditions [that
14 would] stir contentions, cause delays, and invite litigations” over maintenance and cure, it
15 has never announced a standard under which courts should review pretrial motions
16 seeking maintenance and cure. Vella v. Ford Motor Co., 421 U.S. 1, 4 (1975) (quoting
17 Farrell v. United States, 336 U.S. 511, 516 (1949)). The Ninth Circuit has reviewed
18 grants of summary judgment for maintenance and cure, but has never decided whether
19 summary judgment is the only procedural vehicle a seaman can use to obtain maintenance
20 and cure in advance of trial. E.g., Glynn v. Roy Al Boat Management Corp., 57 F.3d
21 1495, 1505-06 (9th Cir. 1995). Many district courts within the Ninth Circuit have treated
22 a motion to compel maintenance and cure as a motion for summary judgment under Rule
23 56. E.g., Guerra, 2004 U.S. Dist. LEXIS 24388, at *3; Blake v. Cairns, No. C-03-4500
24 MJJ, 2004 U.S. Dist. LEXIS, at *2-3 (N.D. Cal. Aug. 16, 2004). Others have employed a
25 variety of less demanding standards. E.g., Kezic v. Alaska Sea, No. C04-820P, 2004 U.S.
26 Dist. LEXIS, at *5-7 (W.D. Wash. Sept. 1, 2004); Boyden v. American Seafood Co.,

1 2000 A.M.C. 1512, 1514 (W.D. Wash. 2000). As another court within this district has
2 noted:

3 Applying a summary judgment standard to the payment of maintenance and
4 cure would invite litigation and cause delays by involving the court in the
5 medical determinations of maximum medical improvement, thus
undermining the policy of simplicity in these matters.

6 Boyden, 2000 A.M.C. at 1514 (Rothstein, J.).

7 The court is persuaded that the Supreme Court's instructions to construe claims for
8 maintenance and cure liberally in favor of seamen counsel against applying the rigid
9 standards of Rule 56 to a pretrial motion to compel maintenance and cure. In exercising
10 its admiralty jurisdiction, the court is empowered to take a "flexible" approach. Putnam
11 v. Lower, 236 F.2d 561, 568 (9th Cir. 1956). The court acknowledges the tension
12 between a seaman's claim to payments for medical attention and living expenses and a
13 shipowner's concern that if it ultimately proves that the seaman is not entitled to
14 maintenance and cure, it may be left with little realistic opportunity to recover the
15 payments. Nonetheless, the court must resolve that tension in favor of the seaman.
16

17 Turning to the facts of this case, it is clear that Plaintiff would not prevail if the
18 court construed his motion as one for summary judgment. There are several major
19 disputes. The parties disagree over whether Plaintiff sustained an injury in service of the
20 UNIMAK. Dr. Haft maintains that Plaintiff's June 21, 2004 heart attack was the result of
21 lifting the pump aboard the UNIMAK on June 15, 2004. Dr. Robert Thompson, who
22 reviewed Plaintiff's medical records for Defendants, opines that the heart attack was
23 unrelated. Dr. Haft maintains that the treatment Plaintiff currently receives is "curative"
24 in nature, suggesting that Plaintiff has not reached maximum cure. Dr. Thompson states
25 that Plaintiff has recovered as fully as his condition allows. In addition, Defendants
26 contend that Plaintiff's heart condition and concomitant susceptibility to heart attacks was
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1 a pre-existing condition that he intentionally concealed when he sought employment on
2 the UNIMAK.¹ Such conduct can bar a seaman from recovering maintenance and cure.
3 Burkert v. Weyerhaeuser Steamship Co., 350 F.2d 826, 829 n.4 (9th Cir. 1965).

4 Because Plaintiff has put forth evidence supporting each element of his
5 maintenance and cure claim, the court grants his motion to compel in part. The court
6 orders Defendants to pay maintenance from February 15, 2005 through November 30,
7 2005. Between now and the end of November, Defendants may, if they choose, conduct
8 additional discovery (including a medical examination of the Plaintiff under Fed. R. Civ.
9 P. 35) to bolster their defense to the maintenance and cure claim. Plaintiff may file a
10 second motion for maintenance and cure beyond the end of November if circumstances
11 warrant such relief.
12

13 The court denies Plaintiff's motion to the extent that it seeks cure payments.
14 Although Plaintiff claims just under \$10,000 in medical bills, he provides no evidence
15 linking those bills to treatment designed to help him achieve maximum cure. The court's
16 denial of this portion of Plaintiff's motion is without prejudice to a subsequent motion
17 that better establishes the curative nature of medical treatment he has received.
18

19 The court must also determine an appropriate maintenance rate. Under Plaintiff's
20 employment contract, he is entitled to \$20 per day. The court is not bound by a
21 contractual rate, however, particularly in "instances in which the payment is not adequate
22 to provide him with lodging and three meals per day of the kind and quality he would
23 have received aboard the vessel." Rutherford v. Sea-Land Service, Inc., 575 F. Supp.
24 1365, 1370 (N.D. Cal. 1983); see also Am. Seafoods Co. v. Nowak, No. C01-161P, 2002
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26
27 ¹The evidence suggests that Plaintiff intentionally concealed his heart condition in
28 response to a pre-employment questionnaire, but Defendants have yet to seek summary
disposition of this claim.

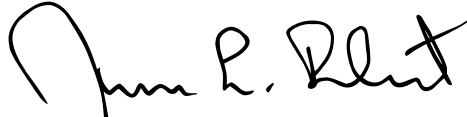
1 U.S. Dist. LEXIS 20254, at *6-7 (W.D. Wash. Feb. 25, 2002) (“a seaman’s right to a
2 reasonable payment for maintenance is a legal right that cannot ordinarily be abrogated
3 by an individual employment contract.”). After reviewing the parties’ evidence, the court
4 concludes that \$40 per day is an appropriate maintenance rate.²

5 The only remaining question is Plaintiff’s request for attorney’s fees for this
6 motion. Fees are available in instances where the shipowner “willful[ly] and
7 persistent[ly]” withholds maintenance and cure. Glynn, 57 F.3d at 1501. The court finds
8 no willful or persistent withholding here. Defendants made substantial maintenance and
9 cure payments until February 2005, and cut off payments only in light of substantial
10 evidence supporting their defenses to maintenance and cure.
11

12 IV. CONCLUSION

13 For the reasons stated above, the court GRANTS Plaintiff’s motion (Dkt. # 22) in
14 part and DENIES it in part.

15 Dated this 25th day of August, 2005.
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19 _____
20 JAMES L. ROBART
21 United States District Judge
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25 ²The court cannot accept Plaintiff’s contention that the court should include living
26 expenses for his wife as part of the maintenance award. The court awards maintenance purely
27 as a substitute for shipboard housing and food. Plaintiff clearly had no entitlement to his wife’s
28 company aboard the UNIMAK. As the court is not awarding cure at this point, it makes no
comment on whether expenses for Plaintiff’s wife may be a component of a properly supported
claim for cure.